THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 16626 of 2006

09-08-2006

Between:-

Subhash Kapoor and another.

Petitioners

And

The Regional Joint Commissioner, Multizone-III, Endowment Department, Hyderabad and four others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 16626 of 2006

Oral order:

The petitioners claim ownership of property bearing Nos. 14-11-1048 to 14-11-1054 and 14-11-1066 to 1084 (Old No. 2195 to 2222) situated at Birbanbagh, Shahinyath Gunj, Hyderabad in an extent of 5000 square yards including the structures therein known as 'Dharmashala and Mahadev Temple. The 3rd respondent filed O.A.No. 80 of 2002 before the 2nd respondent seeking a declaration that the premises and the structures thereon do not belong to the petitioners, but are endowment properties governable by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the

Act'). Asserting that the 3rd respondent-petitioner in O.A.No. 80 of 2002 did not lead any evidence since 2002, the petitioners filed I.A.No. 82 of 2004 contending that O.A.No. 80 of 2002 may be dismissed.

The 2nd respondent, by the order dated 11-11-2005 rejected I.A.No. 82 of 2004 holding that notwithstanding that the 3rd respondent failed to adduce any evidence, the burden is on the petitioners to prove that the property in question is not an endowed one, by adducing necessary oral and documentary evidence. Assailing the order of the 2nd respondent dated 11-11-2005 as perverse and illegal, the petitioners preferred a revision in R.P.No. 27 of 2005 before the 1st respondent under Section 92 of the Act. By the order impugned dated 06-07-2006, the 1st respondent rejected the revision and directed the 2nd respondent to proceed with the trial of O.A.No. 80 of 2002 on merits after giving due opportunity to the petitioners and the 3rd respondent herein. Assailing this revision order of the 1st respondent, the writ petition is filed.

As the 1st respondent has merely directed the 2nd respondent to proceed with the trial of O.A.No. 80 of 2002, no case is made out for interference in this writ petition. It is however made clear that as a principle of law the 2nd

respondent shall determine the claim of the 3rd respondent on the basis of the evidence led by him in support of his claim. The 2nd respondent ought not to call upon the petitioners to lead evidence to disprove a claim, which is not established by evidence by the 3rd respondent. The writ petition is disposed of as above at the stage of admission after hearing the learned Government Pleader for Endowments. No costs.

GODA

RAGHURAM, J

Dated:09-08-2006
Pvks/*